



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY
Cable Television Division**

BULLETIN

Adelphia Franchise Fee
April 23, 2003

The Cable Television Division ("Cable Division") of the Department of Telecommunications and Energy received notice that Adelphia Cable Communications ("Adelphia") recently began imposing an Access Studio Fee in the following communities: Adams, Aquinnah, Carver, Cheshire, Chilmark, Edgartown, Falmouth, Kingston, North Adams, Oak Bluffs, Plymouth, Sandwich, Tisbury, West Tisbury, and Williamstown. Under the terms of the Licenses executed between Adelphia and each municipality, Adelphia has agreed to pay a percentage of its annual gross revenue to support the public, educational, and/or governmental ("PEG") access channels in the municipalities. As a requirement under the License, this payment constitutes a franchise fee pursuant to federal law. 47 U.S.C. § 542. Adelphia is permitted by federal law and regulations to pass this franchise fee through to subscribers. 47 U.S.C. § 542; 47 C.F.R. § 76.924(f)(3).

While the pass through to subscribers is, therefore, appropriate, the Cable Division questioned the timing of this pass through. Generally, cable operators are allowed to change their basic service tier ("BST") programming rates once in any twelve-month period. 47 C.F.R. § 76.922(e). Cable operators seeking to pass through franchise fees to subscribers typically do so on an annual basis concurrent with the filing of Federal Communications Commission ("FCC") forms establishing the BST programming rates for the next year. Adelphia files its FCC forms such that BST rate changes are allowed in July of each year. As such, Adelphia would typically impose or increase any franchise fees annually in July.¹

Federal regulations provide limited exceptions to this general rule that allow cable operators to increase rates outside of the twelve-month period. 47 C.F.R. § 76.933(g). Pertinent to this situation, cable operators may increase rates to reflect the imposition of franchise fees or increases in existing franchise fees. 47 C.F.R. § 76.933(g)(5). The FCC has further interpreted this provision to allow a cable operator to pass through the entire amount of the franchise fee "at any time regardless of whether the cable operator passed through the entire amount of the franchise fee at the first opportunity, or subsequently opted to do so." City of Pasadena, California, et al.,

¹ Adelphia has also informed us that the filing of their 2003 FCC forms will be delayed until further notice.

Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, 16 FCC Rcd 18, FCC 01-289 (Oct. 4, 2001).²

We have verified through review of past rate forms and rate cards for the above-mentioned municipalities that while Adelphia has been entitled to pass through this franchise fee since the commencement of the License in each municipality, Adelphia did not choose to do so until April of this year.³ Based on Pasadena, the Company may pass through the current franchise fee at this time, even though Adelphia made a business decision not to recover franchise fees in the past. We find Adelphia's imposition of the Access Studio Fee in Adams, Aquinnah, Carver, Cheshire, Chilmark, Edgartown, Falmouth, Kingston, North Adams, Oak Bluffs, Plymouth, Sandwich, Tisbury, West Tisbury, and Williamstown at this time to be in compliance with applicable law.

² Petitioners argued on appeal that cable operators seeking to impose or increase franchise fees must do so on a quarterly or annual basis, depending on the filing date of FCC forms. The 5th Circuit affirmed Pasadena and held that the FCC was not unreasonable in its interpretation of the relevant regulation. Texas Coalition of Cities for Utility Issues, et al. v. Federal Communications Commission, 2003 WL 1088444 (5th Cir. March 27, 2003).

³ The municipalities' License commencement dates ranged from 1993 to 2001.